

ORIGINAL

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

FILED IN CLERK'S OFFICE
U.S.D.C. -Gainesville

**ABIGAIL MARILYN AYERS, as
Surviving Spouse and Administratrix
of the Estate of JONATHAN PAUL
AYERS,**

Plaintiff,

vs.

**OFFICER BILLY SHANE HARRISON
Individually,
OFFICER KYLE BRYANT, Individually
and In His Official Capacity;
OFFICER CHANCE OXNER, Individually,
THE MOUNTAIN JUDICIAL CIRCUIT
NARCOTICS CRIMINAL INVESTIGATION
AND SUPPRESSION TEAM;
SHERIFF RANDY SHIRLEY, Individually,
and in His Official Capacity;
SHERIFF JOEY TERRELL
Individually and In His Official Capacity;**

Defendants.

MAR 15 2010

JAMES N. HATTEN, Clerk
By: *Vicki Dougherty*
Deputy Clerk

CIVIL ACTION FILE

NO. _____

2 10 -CV-0 032

COMPLAINT

1.

This is an action for damages brought pursuant to 42 U.S.C. §1983 and 1988 and the Fourth Amendment to the United States Constitution. Jurisdiction of this

action is based upon 28 U.S.C. § 1331, 1343, and 1367 and on the pendent and supplemental jurisdiction of this Court to entertain claims arising under state law.

2.

On September 1, 2009, Plaintiff's deceased husband, Jonathan Paul Ayers (hereinafter the decedent) was shot and killed by Defendant Harrison, in Toccoa, Georgia, within the Northern District of Georgia, Gainesville Division, without legal cause or excuse, while Defendants Harrison, Bryant and Oxner were in the process of unreasonably seizing the decedent and while unreasonably violating his rights under the Fourth Amendment to the United States Constitution.

3.

The Plaintiff is the surviving spouse of the decedent and proceeds individually as the heir-at-law of the decedent and in her capacity as the Administratrix of his Estate. The Plaintiff seeks compensation for the full value of the life of the decedent, because of his wrongful death, and in her capacity as Administratrix of his Estate does seek compensation for the mental and physical pain and suffering he was forced to endure prior to his death, for reimbursement of the funeral expenses attendant to his death as well as reimbursement for medical expenses which were incurred as a result of the tortious misconduct of the Defendants as set forth herein.

4.

The Defendant Mountain Judicial Circuit Narcotics Criminal Investigation and Suppression Team (hereinafter Mountain Judicial Circuit NCIS) is an association and joint venture between the governing bodies of Habersham, Stephens and Rabun counties and the Georgia cities of Alto, Baldwin, Clarkesville, Clayton, Cornelia, Demorest, Dillard, Mount Airy, Mountain City, Sky Valley, Tallulah Falls and Toccoa. Exhibit 1 attached - (Memorandum of Intergovernmental and Interagency Agreement) is a true and correct copy of the agreement of these entities to form the Mountain Judicial Circuit NCIS which association was formed on July 1, 2009. This association is a joint venture of the governing bodies set forth above who have combined and pooled their resources to facilitate the investigation and prosecution of drug and other criminal offenders. At all times pertinent to the events alleged herein, Defendants Harrison, Oxner and Bryant were acting within the scope of their employment and agency as representatives of this joint venture/association. Each member of this association personally participated in the subject incident through these their designated agents.

5.

Upon information and belief, the Habersham County Commissioner's Office

and/or the Sheriff of Habersham County and Defendant Randy Shirley have been designated as the agents on behalf of the other participating governing bodies to administer the activities of the NCIS joint venture. Once either or both are duly served in this matter, the Mountain Judicial Circuit NCIS will be subject to the jurisdiction of this Court. As notice of Plaintiff's claims against the joint venture members, each of the member bodies set forth in number 4 above may also be served with process in this action.

6.

At all times pertinent to the events alleged herein, Defendant Billy Shane Harrison was operating and acting under color of law and in a dual capacity as an agent of the Stephens County Sheriff's Department and the Mountain Judicial Circuit NCIS. Given his dual capacity and because he was acting on behalf of the joint venture association, Plaintiff specifically asserts that said Defendant was acting on behalf of each of the governing bodies identified in paragraph 4 above. Once duly served, said Defendant will be subject to the jurisdiction of this Court.

7.

At all times pertinent to the events alleged herein, Defendant Kyle Bryant was operating and acting under color of law and in a dual capacity as an agent of the

Habersham County Sheriff's Department and as an agent of the Mountain Judicial Circuit NCIS. Given his dual capacity and because he was acting on behalf of the joint venture association, Plaintiff specifically asserts that said Defendant was acting on behalf of each of the governing bodies identified in paragraph 4 above. Once duly served, said Defendant will be subject to the jurisdiction of this Court.

8.

At all times pertinent to the events alleged herein, Defendant Chance Oxner was operating and acting under color of law and in a dual capacity as an agent of the Habersham County Sheriff's Department and as an agent of the Mountain Judicial Circuit NCIS. Given his dual capacity and because he was acting on behalf of the joint venture association, Plaintiff specifically asserts that said Defendant was acting on behalf of each of the governing bodies identified in paragraph 4 above. Once duly served, said Defendant will be subject to the jurisdiction of this Court.

9.

At the time of the events complained of herein, Defendant Randy Shirley was the duly elected Sheriff of Stephens County. Because he is a member of the Control Group of the Mountain Judicial Circuit NCIS, all of the governing bodies set forth in paragraph 4 above act personally through him with respect to its activities. Once

duly served, said Defendant will be subject to the jurisdiction of this Court.

10.

At all times pertinent to the events alleged herein, Defendant Joey Terrell was acting as the duly elected Sheriff of Habersham County. Because he is a member of the Control Group of the Mountain Judicial Circuit NCIS, all of the governing bodies set forth in paragraph 4 above act personally through him with respect to its activities. Once duly served in his official and individual capacity and also on behalf of the NCIS joint venture, said Defendant (and the Mountain Judicial Circuit NCIS) will be subject to the jurisdiction of this Court.

11.

At all times pertinent to the events alleged herein, Defendants Oxner, Bryant and Harrison were acting under color of law to wit: under the color of the statutes and ordinances of the state of Georgia and the regulations, policies, customs and usages of their respective jurisdictions and the Sheriff's departments located within Stephens and Habersham counties and also in their dual capacities as agents of the Mountain Judicial Circuit NCIS.

12.

On September 1, 2009, in their dual capacities as set forth herein, Defendants

Harrison, Bryant and Oxner were acting in an undercover capacity as agents of the Mountain Judicial Circuit NCIS and as such were not dressed in uniform as police officers.

13.

At the time of the events alleged herein, Defendants Oxner, Bryant and Harrison were dressed in such a manner as to convince unsuspecting members of the public that they were not police officers but were instead drug dealers and/or criminals since this was part of their undercover role. Additionally, Defendants Oxner and Harrison's personal appearance and lack of personal grooming (when combined with their manner of dress) would indicate to any reasonable person who saw them that they were not police officers but very likely drug dealers and/or criminals.

14.

On September 1, 2009, Defendants Oxner, Bryant and/or Harrison briefly observed the decedent in the presence of one Kayla Barrett, an alleged target of a Mountain NCIS undercover drug investigation. Upon information and belief, Ms. Barrett had previously offered to sell Defendant Oxner \$50 worth of crack cocaine several hours before the incident in question. The decedent had no connection with

the prior transaction or with the drug investigation.

15.

At the time Defendants Oxner, Bryant and/or Harrison observed the decedent in the presence of Ms. Barrett, they had no probable cause to believe that he had committed a crime and he was not seen committing any crime himself. He was seen in her presence. No attempt was made to immediately detain, apprehend or investigate the decedent at the time he was observed in the presence of Ms. Barrett because there was no evidence that he had committed a crime and, in fact, he was allowed to leave the scene in his car and was not followed by these or any other officers.

16.

At some time after Defendants Oxner, Bryant and/or Harrison observed the decedent but prior to the unlawful shooting at issue, these or other officers working with them were able to acquire the tag number of the vehicle that the decedent was driving and were in possession of information sufficient to determine his identity if at a later date it was deemed necessary to investigate why he had been in the presence of a target of their investigation.

17.

After the decedent left the presence of Ms. Barrett, Defendants Oxner, Harrison and Bryant thereafter left the scene and returned to their offices. Later, they did by happenstance see the decedent and his vehicle as he was about to enter a Shell gas station and convenience store located at the intersection of Broad and Currahee Streets in Toccoa, Georgia. These officers did then decide that they would seize the person of the decedent before he could leave the Shell convenience store property.

18.

Upon information and belief, the purpose of the attempted seizure of the decedent was to determine why the decedent had been in the presence of Ms. Barrett and/or to conduct an illegal search of his vehicle. Less intrusive means other than those utilized should have been employed, but due to the gross and plain incompetence of these Defendants were not.

19.

At the time Defendants Oxner, Bryant and Harrison decided to approach the decedent outside the Shell convenience store located at Broad and Currahee Streets in Toccoa, Georgia, no exigent circumstances existed and they had no warrant for his arrest.

20.

At the time Defendants Oxner, Bryant and Harrison decided to approach the decedent at the time and place in question, on September 1, 2009, the decedent, in fact, had committed no crime known to any of these officers.

21.

At the time and place in question, when Defendants Oxner, Bryant and Harrison decided to approach the decedent at the Shell convenience store, they had no reasonable or articulable suspicion that the decedent was armed, was dangerous or presented any danger to them.

22.

As set forth herein, before approaching the decedent at the Shell convenience station and attempting the unlawful seizure of his person, the Defendants knew they were not dressed as police officers, knew that they were, in fact, dressed as possible drug dealers, in plain clothes and also knew that they were in an unmarked vehicle.

23.

Attached hereto as Exhibit 2 is a photograph of Defendant Harrison taken on the date of the subject incident which depicts his appearance as he approached the decedent. The necklace around his neck is camouflaged by the designs of the T-shirt,

and barely visible as a law enforcement identification. It would reasonably appear as a piece of "bling," or decorative jewelry and, if seen at all, would very likely not be recognized as identification, particularly if a weapon was being simultaneously pointed at a startled private citizen.

24.

Before approaching the decedent at the Shell convenience store, in violation of proper police procedure, these Defendants intentionally did not call or ask for the assistance of a marked unit, clearly marked as a law enforcement vehicle, nor did they ask for the assistance of a uniformed officer.

25.

On the date in question before he was shot and killed, Defendants Oxner, Bryant and Harrison waited to approach the decedent until after he walked out of the convenience store on foot, entered his vehicle and was attempting to leave the Shell Station in his vehicle.

26.

The decedent was acting lawfully when he attempted to leave the Shell station in his vehicle. He had obtained cash from an ATM machine inside the convenience store and was exiting the parking lot in his vehicle just before he was shot.

27.

While the decedent was in the lawful process of attempting to leave the Shell station in his vehicle as was his absolute right, Defendants Oxner, Bryant and Harrison did suddenly descend upon his vehicle in such a manner as would startle, frighten and/or confuse any reasonable person, particularly someone who had just obtained cash from an ATM machine and was in a moving vehicle.

28.

At the time of the events alleged herein, and at the time they decided to approach the decedent, as set forth herein, Defendants Oxner, Bryant and Harrison occupied an undercover, unmarked Cadillac Escalade vehicle, and thus these Defendants knew that their vehicle did not resemble in the slightest a law enforcement vehicle. No lights or siren were employed when the Escalade suddenly and rapidly approached the decedent in the parking lot of the convenience store.

29.

Before the decedent was shot and killed, not only did the officers descend upon his person in an unmarked vehicle, Defendants Harrison and Oxner also descended upon the decedent while dressed as criminals, by rushing toward his vehicle on foot after they exited the unmarked vehicle.

30.

At the time Defendants Oxner, Bryant and Harrison descended upon the decedent after exiting the unmarked vehicle, Defendant Harrison did so in such a manner as to place the decedent in reasonable apprehension of receiving a violent injury in that Defendant Harrison was brandishing a firearm and pointing it at the decedent while suddenly coming towards the decedent Ayers' moving vehicle.

31.

It is a violation of proper police procedure to endanger private citizens and cause them to be in reasonable apprehension of receiving a violent injury by acting in a manner that would cause a reasonable person to mistake a police officer as an armed criminal. Defendant Harrison either knew or should have known that his actions were not authorized by law.

32.

At the time and place in question, a reasonable law enforcement official would understand that if he were dressed as a criminal and acting as a criminal that he might very well be perceived as a criminal particularly if he rushed at an unsuspecting private citizen and suddenly descended upon their person while brandishing a weapon.

33.

It is objectively unreasonable to brandish a weapon on a private citizen if it is the intent of the law enforcement officer to question a citizen and particularly in circumstances where, as here, an officer has no arguable probable cause or articulable reasonable suspicion to believe that the citizen being approached presented a danger to them.

34.

While rushing at Plaintiff's decedent on foot and while pointing a weapon at him, Defendant Harrison did startle, frighten and confuse the decedent as to his intentions.

35.

During his encounter with persons who were not clearly identified as police officers, the decedent did reasonably fear for his safety and did attempt to leave the Shell station and escape the situation with which he was confronted, which at the time and place in question, reasonably appeared to be an attempted robbery and assault or other criminal act to harm decedent.

36.

While the decedent was attempting to flee from what would be reasonably be

perceived as an attempted armed robbery and assault, and just prior to the decedent being shot by Defendant Harrison, Defendant Oxner did run directly behind decedent's moving vehicle, which at the time was traveling in reverse. At this time, the decedent changed gears and began moving forward, posing no danger to the Defendants as he attempted to avoid what appeared to be a robbery.

37.

In order to prevent the decedent's attempted escape, Defendant Harrison did employ deadly force against the decedent and did shoot the decedent with his firearm.

38.

At the time Defendant Harrison approached the decedent in his moving vehicle, while dressed as he appears in Exhibit 2, upon information and belief, he did yell at the decedent to get out of his car while brandishing a weapon. The decedent failed to obey these commands (not knowing he was being addressed by a police officer) and attempted to flee as he was afraid for his safety. Defendant Harrison then employed deadly force against the decedent to prevent decedent's escape, because he had not stopped as ordered. Later, Defendant Harrison did allege and claim that he shot the decedent because he believed at the time he shot him that his partner Defendant, Chance Oxner, had been killed by the decedent in the parking lot. Such

an assertion, when the facts are viewed objectively, is and was completely unreasonable (if, in fact, a belief was ever entertained by said Defendant).

39.

Plaintiff asserts that Defendant Harrison panicked due to a lack of professionalism and training regarding the proper use of force and acted as he did with the use of deadly force because the decedent failed to stop and get out of his car when told to do so, not because the decedent had “killed” Chance Oxner and/or “broken both of Oxner’s legs” as Defendant Harrison unreasonably claimed after the incident.

40.

Because Defendants Harrison, Oxner and Bryant’s joint conduct unreasonably created the alleged need to use deadly force, such use of force was unreasonable even if Harrison subjectively believed such force was necessary to prevent death or severe bodily injury.

41.

Unconstitutional and unprofessional conduct such as that involved here that precipitates an alleged need to use deadly force violated the decedent’s Fourth Amendment rights and such use of force was unreasonable given the totality of the

circumstances which existed at the time.

42.

Under the circumstances which existed at the time and place in question, when judged by objective standards, a reasonable police officer would have known at the time and place in question that:

- a) If he rushed at a suspect in an undercover, unmarked vehicle that he might startle, confuse and/or frighten an unsuspecting citizen and innocent person;
- b) If, in addition to using and operating a vehicle in a negligent manner such that the use of said vehicle itself might startle, frighten and/or confuse any reasonable person, a reasonable officer would also know that if they also rushed at the unsuspecting person on foot that this might not only startle, confuse and frighten an innocent person but it also might create a condition of apprehension of potentially receiving a violent injury in the mind of the person being approached in such a manner;
- c) Reasonable police officers know because of the foreseeable confusion that could be created by rushing at a suspect while dressed in plain clothes as a possible criminal and while operating an unmarked, undercover vehicle, that if the purpose of the approach of the person was merely to question them, that they should instead 1) call for a backup unit or uniformed officer, if at all possible; 2) Don police jackets and/or law enforcement gear which would clearly identify themselves as law enforcement officials before approaching either the vehicle or suspect; 3) Approach on foot calmly and professionally clearly identify themselves with a clear display of credentials under circumstances where the person being approached would not be confused, startled or frightened but would instead have adequate and sufficient time to clearly

identify the individuals approaching as law enforcement officials;

- d) Approaching someone in a vehicle traveling in reverse while brandishing a weapon at them would not give adequate opportunity to identify someone dressed in street clothes as a police officer even if a small credential was being displayed about their neck and particularly because the use of the weapon at the same time would likely confuse/frighten them.

43.

At all times pertinent to the events alleged herein, Defendants Oxner, Harrison and Bryant did fail to adhere to proper standards of professional police conduct and were plainly incompetent in their actions as described and violated the constitutional rights of decedent as guaranteed by the Fourth Amendment.

44.

At the time Defendant Harrison approached the decedent at the Shell convenience store and used deadly force against him, his actions were objectively unreasonable. Alternatively, and in addition to the discrete excessive use of force claims set forth herein, and upon information and belief, at the time of the subject incident, Defendant Harrison was not authorized under Georgia law to perform the duties of a law enforcement officer and had no legal right to demand decedent's compliance with his directives, nor did he have the right to use a weapon or attempt

to detain a private citizen while acting as a law enforcement official.

45.

Upon information and belief, Defendant Harrison either knew or should have known that he was knowingly violating the law in the manner and method of the attempted seizure of the decedent.

46.

At the time Defendant Harrison shot the decedent, no reasonable police officer would have believed that the decedent's actions were unlawful or that the use of deadly force against him was reasonable or necessary. The predicate undercover operation including Ms. Barrett involved a \$50.00 sale not involving decedent, and there was no objective or reasonable basis for using deadly force against someone not known to be dangerous and who had only been seen in her presence.

47.

Just before shooting the decedent, Defendants Oxner, Bryant and Harrison through their joint plain incompetency, unconstitutional and unprofessional conduct had unreasonably created a physically threatening situation for the decedent. Under these circumstances, they cannot be immunized for the use of the deadly force which was then employed against the decedent.

48.

At the time the decedent was shot and killed, the decedent did not know that the Defendants Oxner, Bryant or Harrison were law enforcement officers and so stated to medical personnel (and other witnesses) before he died approximately four (4) hours after being shot.

49.

Because of his own incompetency and due to unauthorized, unprofessional and unreasonable conduct, all of which violated the decedent's constitutional rights, Defendant Harrison used deadly force against the decedent when it was not objectively reasonable to do so.

50.

At the time and place in question, the decedent did not recognize the Defendants as law enforcement officials, and he had a right to defend himself and to retreat from their perceived aggressive actions.

51.

At all times pertinent to the events alleged herein leading up to and at the time of the shooting of the decedent, Defendant Bryant was the supervisor in charge of the actions of Defendants Harrison and Oxner.

52.

At the time Defendants Bryant, Oxner and Harrison decided to approach the decedent and before he was shot, Defendant Bryant knew that he and his officers were unlawfully attempting to seize the person of the decedent in violation of proper police procedure and yet he failed to take any actions to intervene or stop the unlawful seizure of the Plaintiff's decedent.

53.

At all times pertinent to the events alleged herein, even though he was the supervisor on the scene, Defendant Bryant did fail to intervene to prevent an illegal seizure that was conducted without any probable cause and, in fact, allowed one of the officers under his command, in his presence, to assault the decedent with a drawn weapon even though there was no articulable reasonable suspicion before the approach of the decedent that he presented any danger to the officers.

54.

There was no justification for the shooting of the decedent in that Defendant Oxner did place himself in danger by running behind a moving vehicle which was traveling in reverse and failed to exercise ordinary care for his own safety in so doing. In addition, at the time the decedent was shot, he was attempting to move away from

Defendants and was merely attempting to leave the scene and was not seen to be operating his vehicle in such a manner as to create in the mind of a reasonable police officer when judged by objective standards that he was voluntarily and intentionally attempting to harm them.

55.

At all times during the events described herein, Defendants Oxner, Bryant and Harrison were engaged in a joint venture and assisted each other in performing the various actions described and lent their physical presence and support and the authority of their office to each other during said events.

56.

During the encounter described herein, the decedent was shot by Defendant Harrison in his abdomen and did justifiably experience shock, fright and terror as it appeared that criminals were robbing and assaulting him. Nonetheless, decedent was able to escape from the assault upon his person on a temporary basis and traveled some one thousand yards in his vehicle before wrecking it.

57.

At the time the decedent wrecked his vehicle, he was in extreme pain, having been shot in his abdomen and was dying.

58.

Before the decedent died from the wounds he sustained during the encounter with Defendants as described herein, the decedent was subjected to extensive mental and physical pain and suffering as a result of the ordeal that Defendants created.

59.

Prior to this death, the decedent reiterated on several occasions that he had been placed in fear of his life by Defendants Harrison, Oxner and Bryant and made clear that he did not know that they were law enforcement personnel in that he asked others who they were and why they had assaulted him and tried to kill him.

60.

The decedent did not die immediately but was conscious for several hours and in great pain and suffering from his injuries.

61.

Following the unreasonable assault and battery upon his person as described, the decedent died on September 1, 2009 at the Stephens County Hospital.

62.

At no time during the event described herein was decedent armed with any weapon nor did he pose a threat to the safety of others. He had not committed any

criminal offenses known to the Defendants Oxner, Harrison and Bryant at the time that they approached him nor did he commit any offense in their presence thereafter.

63.

At no time did the decedent voluntarily drive his car towards an officer he could clearly see or that he knew to be an officer, nor did the decedent willfully or intentionally intend to harm anyone in his attempt to escape the threatening encounter described.

64.

Police officers who unreasonably and unconstitutionally create a physically threatening situation in the midst of a Fourth Amendment seizure cannot be immunized for the use of deadly force.

65.

Under the circumstances existing at the time and place in question, no reasonable officer could have believed that the decedent's actions were unlawful or that the use of deadly force against him was justified.

66.

The actions of Defendants Harrison, Bryant and Oxner violated the following clearly established and well settled federal constitutional rights of the decedent:

- a) Freedom from unreasonable seizure of his person; and
- b) Freedom from the use of excessive unreasonable and unjustified force against his person.

67.

As a direct and proximate result of the acts of Defendants Harrison, Bryant and Oxner, the decedent suffered the following injuries and damages:

- a) A violation of his constitutional rights under the Fourth Amendment to the United States Constitution to be free from unreasonable search and seizure of his person;
- b) Physical pain and suffering and emotional trauma and suffering requiring the expenditure of money for his medical treatment;
- c) Loss of his life.

COUNT ONE
42 U.S.C. § 1983 - WRONGFUL DEATH
(AGAINST DEFENDANTS HARRISON, OXNER, AND BRYANT
IN THEIR INDIVIDUAL CAPACITIES)

68.

The Plaintiff reiterates paragraphs 1-8, and 11-67 above as though fully and completely set forth verbatim herein.

69.

The Plaintiff claims damages for the wrongful death of her husband and seeks damages for the full value of the life of Jonathan Paul Ayers in her capacity as his

heir-at-law and surviving spouse.

COUNT TWO
42 U.S.C. § 1983 - SURVIVAL ACTION
(AGAINST DEFENDANTS HARRISON, OXNER, AND BRYANT
IN THEIR INDIVIDUAL CAPACITIES)

70.

The Plaintiff reiterates paragraphs 1-8, 11-67 above as though fully and completely set forth verbatim herein.

71.

As set forth herein, Jonathan Paul Ayers was forced to endure great conscious mental and physical pain and suffering medical treatment before his death.

72.

In that the decedent suffered conscious pain and suffering prior to his death, under the laws of the state of Georgia, such claims may be brought by the Administratrix of his Estate against the Defendants named herein.

73.

In her representative capacity, the Plaintiff claims damages for the conscious pain and suffering of her deceased husband and for necessary medical and funeral expenses incurred as a result of the unlawful and unauthorized actions as described

herein under 42 U.S.C. § 1983 and under Georgia law.

COUNT THREE
42 U.S.C. § 1983 AGAINST THE MOUNTAIN JUDICIAL CIRCUIT NCIS
AND SHERIFF'S RANDY SHIRLEY AND JOEY TERRELL
IN THEIR INDIVIDUAL CAPACITIES

74.

The Plaintiff reiterates paragraphs 1-67 above as though fully and completely set forth verbatim herein.

75.

Prior to September 1, 2009, the Mountain Judicial Circuit NCIS and Sheriffs Shirley and Terrell developed and maintained policies or customs exhibiting a deliberate indifference to the constitutional rights of persons within the constituent jurisdictions of the implementing governing bodies participating in that joint venture.

76.

It was the policy and/or custom of the mountain Judicial Circuit NCIS to inadequately supervise and train its police officers (and fail to hold them accountable for adhering to professional standards of conduct), including the individual defendant officers named herein, thereby failing to adequately discourage constitutional violations on the part of its officers.

77.

As part of the Joint Venture Agreement between the implementing bodies and participants in the joint venture, the Mountain Judicial Circuit NCIS agreed amongst themselves that they would adopt by unanimous vote bylaws governing the conduct of its oversight responsibilities, including the development and adoption of standard operating procedure upon which NCIS team activities would be based. Notwithstanding this agreement, upon information and belief, as of 9/1/09 said defendant did fail to develop and adopt standard operating procedures with respect to the undercover activities of police officers working for the NCIS thereby allowing them to make decisions without proper constitutional guidance.

78.

As part of the joint venture agreement between the implementing bodies of the Mountain Judicial Circuit NCIS, the participants therein agreed that they would have a procedure for the conduct and coordination of investigative seizure, surveillance and use of force. Nonetheless, upon information and belief, no such procedures were in force or had been adopted by the Mountain Judicial Circuit NCIS as of September 1, 2009. In addition, as of the date of the subject incident, Defendant Harrison had not been qualified for the weapon entrusted to him nor had he received any training

from his employers on the proper use of force in his undercover capacity.

79.

As part of their Joint Venture Agreement, it was agreed by the implementing bodies of the joint venture known as Mountain Judicial Circuit NCIS that its personnel would be properly qualified for positions within the NCIS and would be adequately trained. Notwithstanding this agreement, at the time of the subject incident, the Mountain Judicial Circuit NCIS failed to verify that officers working with the NCIS were qualified for the positions they held, qualified to be entrusted with dangerous weapons, properly trained on the use of force, and properly trained on constitutional provisions pertaining to undercover activities.

80.

At the time of the events alleged herein, Defendant Billy Shane Harrison was known to the Mountain Judicial Circuit NCIS and Sheriff Shirley to have illegally used marijuana on multiple occasions and was further known to have committed acts of dishonesty including stealing from a prior employer. It was also known that he had not been qualified on the use of the weapon entrusted to him and that he had been given no training on use of force or how or when to use his firearm as required by the Georgia Peace Officers and Training Council. Upon information and belief, Harrison

failed to keep required training current through 2008, and had received no training in 2009 as of the date of the subject incident on the use of force or otherwise. Nonetheless, even though he also was not adequately trained on the use of force or properly qualified to use a firearm on the date of the subject incident and had no legal authority to perform any of the duties of a peace officer, he was entrusted by Sheriff Shirley with a dangerous weapon and entrusted with the responsibility of observing the constitutional rights of citizens whom he encountered in the scope of his duties. Similarly, on the date of the subject incident, it was known to the Mountain Judicial Circuit and Sheriff Terrell that Defendant Oxner had been convicted of the criminal offense of Theft by Taking and had a reported history of alcohol abuse and suspected (by the Habersham County Sheriff's Office) participation in illegal drug activities. Nonetheless, said Defendant was negligently entrusted by Sheriff Terrell with the responsibility of observing the constitutional rights of private citizens he encountered while performing his duties as a member of the Mountain Judicial Circuit NCIS.

81.

As a result of failing to be provided with standard operating procedures governing their conduct, and as a result of failing to demonstrate to them accountability for violations of proper police procedure, including procedures

pertaining to their lawful authority, the use of force, and proper use of firearms, the individual officers herein believed that their actions would not be properly monitored by their supervisory officers and that any misconduct they committed would not be investigated or sanctioned, but instead would be tolerated without any accountability.

82.

Even though the Mountain Judicial Circuit NCIS members agreed that they would implement policies governing the conduct of officers that they hired, nonetheless, they did not do so and hired individuals who were not qualified for their positions by virtue of their backgrounds, they failed to properly train them on use of force, they failed to properly qualify them on weapons entrusted to them and they failed to properly provide them with standard operating procedures governing the procedures for the conduct and coordination of investigative seizure and use of force on the date of the subject incident.

83.

By failing to adequately supervise and train NCIS officers, and hold them accountable for adhering to professional standards of conduct, and by hiring officers who were not qualified to be entrusted with a firearm and trained on the proper use of force thereafter, the Mountain Judicial Circuit NCIS and Sheriffs Shirley and

Terrell did act unreasonably under objective standards and/or did demonstrate a deliberate indifference to the constitutional rights of persons within their jurisdictions which in part was a cause of the violations of Plaintiff's rights alleged herein.

COUNT FOUR
ASSAULT AND BATTERY - WRONGFUL DEATH
(AGAINST DEFENDANTS HARRISON, OXNER, AND BRYANT
IN THEIR INDIVIDUAL CAPACITIES)

84.

The Plaintiff reiterates paragraphs 1-8 and 12-65 above as though fully and completely set forth verbatim herein.

85.

With respect to her state law claims asserted herein, Plaintiff alleges that at the time Defendant Harrison shot the decedent, Defendant Harrison did act outside the scope of his authority act in the manner and method of his attempted seizure of the decedent. He is entitled to no immunity for such unauthorized actions. Alternatively, and additionally, Plaintiff alleges that Harrison did act with deliberate intent to willfully and wrongfully harm the decedent as he was attempting to escape.

86.

At the time and place in question, the Defendants Bryant and Oxner did jointly

combine and commit acts which placed the decedent in reasonable apprehension of immediately receiving a violent injury. Defendant Harrison did thereafter commit a battery upon the decedent by shooting him.

87.

As a result of the unauthorized and unlawful assault and battery committed upon the Plaintiff's deceased husband, the Plaintiff is entitled to monetary damages for the wrongful death of her husband under Georgia law and seeks compensation for the full value of the life of her decedent.

COUNT FIVE
ASSAULT AND BATTERY - ESTATE'S CLAIMS
(AGAINST DEFENDANTS HARRISON, OXNER, AND BRYANT
IN THEIR INDIVIDUAL CAPACITIES)

88.

The Plaintiff reiterates paragraphs 1-8 and 12-65 above as though fully and completely set forth verbatim herein.

89.

With respect to her state law claims asserted herein, Plaintiff alleges that at the time Defendant Harrison shot the decedent, Defendant Harrison did act outside the scope of his authority in the manner and method of his attempted seizure of the

decedent. He is entitled to no immunity for such unauthorized actions. Alternatively, Plaintiff alleges that he did act with deliberate intent to willfully and wrongfully harm the decedent as he was attempting to flee the apparent assault and robbery attempt.

90.

At the time and place in question, Defendants Oxner, Harrison & Bryant did commit acts which placed the decedent in reasonable apprehension of immediately receiving a violent injury and Defendant Harrison did thereafter shoot him thereby causing him conscious pain and suffering prior to his death. In her capacity as Administratrix of the Estate of her deceased husband, the Plaintiff seeks damages proximately caused by the assault and battery upon her husband prior to his death including compensation for conscious pain and suffering experienced prior to death and for reimbursement of medical expenses incurred as well as for the funeral expenses attendant to.

COUNT SIX
FALSE ARREST (AGAINST DEFENDANTS HARRISON, OXNER,
AND BRYANT IN THEIR INDIVIDUAL CAPACITIES)

91.

The Plaintiff reiterates paragraphs 1-8 and 12-65 above as though fully and completely set forth verbatim herein.

92.

At the time of the seizure of the decedent in the manner and method described, Defendant Harrison was acting outside the scope of his lawful authority and is entitled to no immunity.

93.

With respect to her state law claims asserted herein, Plaintiff alleges that at the time Defendant Harrison shot the decedent, Defendant Harrison knew or should have known that he was committing an unauthorized act in the manner and method of his attempted seizure of the decedent. Alternatively and additionally, Plaintiff alleges that Defendant Harrison did act with deliberate intent to willfully and wrongfully harm the decedent as he was attempting to flee the apparent assault and robbery attempt.

94.

As set forth herein, Defendants Oxner, Harrison and Bryant did unlawfully attempt to seize the person of the decedent in violation of his constitutional rights and in violation of state law in that they falsely seized him without arguable probable cause to believe that he had committed a crime and without any warrant and with no exigent circumstances or articulable reasonable suspicion to believe that he presented

a danger to their persons, but nonetheless did falsely seize and attempt to detain the decedent prior to shooting him thereby, committing the tortious acts of false arrest for which Plaintiff seeks damages under Georgia state law.

COUNT SEVEN
NEGLIGENT USE OF A MOTOR VEHICLE
(AGAINST DEFENDANTS MOUNTAIN JUDICIAL CIRCUIT NCIS,
KYLE BRYANT AND SHERIFFS SHIRLEY AND TERRELL IN THEIR
OFFICIAL CAPACITIES)

95.

The Plaintiff reiterates paragraphs 1-65 above as though fully and completely set forth verbatim herein.

96.

Under the circumstances existing at the time and place in question, the use and operation of the unmarked undercover vehicle was both negligent and reckless. The use and operation of the unmarked vehicle violated proper police procedure regarding the use of unmarked vehicles when attempting to stop a citizen while operating a private vehicle.

97.

At all times pertinent to the events alleged herein, Defendant Bryant was driving, operating and using the unmarked vehicle at issue in an reckless and

negligent manner and was intentionally using it in such a manner as to create the impression that both he and the occupants of the vehicle were criminals.

98.

Upon information and belief, the undercover vehicle being operated by Defendant Bryant was a vehicle that had previously been seized by the Mountain Judicial Circuit NCIS and/or was either owned by it or one of the member jurisdictions of the NCIS.

99.

At all times pertinent to the events alleged herein, the undercover vehicle at issue was being operated pursuant to the joint venture of the governing bodies of the Mountain Judicial Circuit NCIS. Because all of the governing bodies of the joint venture either have liability insurance coverage which would provide coverage for the negligent use and operation of the vehicle since it was being operated and used by Defendant Bryant in the scope of his duties and/or because many of the entities participated through the coverages afforded by the Georgia Interlocal Risk Management Agency, which coverage would also apply to the negligent use and operation of the undercover vehicle, the sovereign immunity of each of these governing bodies, the Sheriffs, the named officers and the NCIS has been waived.

Such sovereign immunity has also been waived pursuant to the provisions of O.C.G.A. § 36-92-2.

100.

Pursuant to provisions of O.C.G.A. § 36-92-3 and as required by its terms, with respect to the use of the vehicle, the Plaintiff brings her claim against Sheriff Terrell, Sheriff Shirley and the Mountain Judicial Circuit NCIS.

101.

As set forth herein, the use and operation of the unmarked vehicle, in the manner described, was both negligent and reckless and done in violation of proper police procedure. The use and operation of the unmarked Mountain Judicial Circuit NCIS motor vehicle did contribute to and help to create a physically threatening situation for the decedent and upon information and belief did startle, frighten and confuse him.

102.

In the exercise of ordinary care Defendant Bryant should have realized that suddenly descending upon a citizen in an unmarked vehicle in a rapid and unexpected manner, without using sirens or blue lights or other official insignia of law enforcement identification could create a physically threatening situation for an

innocent citizen.

103.

When combined with their undercover clothing, the brandishing of a weapon and the use of the vehicle in the manner described, Defendant Bryant did breach his duty of ordinary care in the use and operation of the unmarked undercover vehicle which breach was a proximate and contributing cause of the decedent's attempted escape from the threatening situation with which he was encountered. Because of the negligent use of the unmarked vehicle and because of the manner and method by which the unmarked vehicle was operated by Defendant Bryant, the decedent was placed in reasonable apprehension of receiving a violent injury, could not clearly identify those exiting from the vehicle as police officers, and acted reasonably in attempting to flee from what would have appeared to any reasonable person as either an attempted robbery and/or carjacking or other criminal assault upon his person.

104.

The negligent use and operation of an unmarked vehicle under the circumstances described was a proximate and contributing cause of the wrongful death of the decedent for which the Plaintiff seeks compensation. In addition, as a result of the negligent operation and use of the unmarked vehicle, as set forth herein,

the decedent suffered injuries and damages which he suffered prior to his death.

105.

Plaintiff seeks damages for the wrongful death of her husband and for all conscious pain and suffering caused thereby as well as compensation for medical and funeral expenses incurred in that the negligent use and operation of the unmarked vehicle was a causal, contributing and concurring cause of the death of her husband.

COUNT EIGHT
NEGLIGENT BREACH OF MINISTERIAL DUTIES AGAINST
DEFENDANTS HARRISON, BRYANT AND SHIRLEY IN THEIR
INDIVIDUAL AND OFFICIAL CAPACITIES AND AGAINST
THE MOUNTAIN JUDICIAL CIRCUIT NCIS

106.

The Plaintiff reiterates paragraphs 1 through 65 above as though fully and completely set forth verbatim herein.

107.

Under Georgia State Law, any peace officer who does not fulfill the training requirements required to maintain his/her current authorization to act as a peace officer under the laws of the state loses their powers under Georgia law. Nonetheless, the Stephens County Sheriff Randy Shirley did hire the Defendant Billy Shane Harrison and Billy Shane Harrison himself did fail to keep his hours in compliance

with state law.

108.

Because Defendant Billy Shane Harrison did not keep his training requirements current nor in compliance with Georgia State Law, he had no power whatsoever to make an arrest in the State of Georgia and lost his authority as a law enforcement officer on the date of the subject incident. Defendant Harrison also failed to receive required instruction on the proper use of force in addition to failing to satisfy the minimum requirements of the Georgia Peace Officers' Standards and Training Council. It was negligent for Sheriff Shirley to hire an officer whose certifications were not current for the calendar year 2008, particularly when the individual was hired in July of 2009 without receiving a timely waiver from the State for those required hours which had not been met.

109.

At the time of the subject incident, Defendant Billy Shane Harrison was performing the duties of a law enforcement officer at a time when he had lost his authority to do so. He was enabled in this regard by the negligence of the Sheriff who violated his ministerial duties to make sure that officers working under his command and within the scope of their employment as agents of his department fulfilled the

requirements of Georgia law.

110.

Based on their respective breach of their ministerial duties, Defendant Harrison had no authority to exercise the powers of a law enforcement officer generally, and particularly in areas involving the power of arrest. He was nonetheless negligently permitted to do so by Defendant Sheriff Shirley and also by the NCIS Commander, Defendant Kyle Bryant, who also negligently failed to verify that Defendant Harrison complied with the provisions of Georgia law.

111.

The breach of the duties set forth herein are ministerial duties set forth in O.C.G.A. §§ 35-8-10, 35-8-17 and 35-8-21.

112.

Because Defendant Harrison had no lawful authority to exercise the powers of a law enforcement officer on the date of the subject incident, but was nonetheless negligently allowed to do so having been negligently hired by Defendants Bryant and Sheriff Shirley, all three Defendants are guilty of a breach of their ministerial duties set forth under Georgia law. Accordingly, none of them are entitled to any immunity whatsoever in either their official and individual capacities.

113.

Given that Defendant Harrison had no authority to act as a peace officer on the date of the subject incident, he was not entitled to use a firearm, possess a firearm nor employ the use of deadly force under the circumstances which existed at the time of the subject incident as described herein.

114.

The joint venture task force, Mountain Judicial Circuit NCIS, was acting by and through its designated agents, Defendants Sheriff Shirley and Kyle Bryant, when the decision was made to hire Defendant Harrison and to entrust him with a firearm. This decision also constituted the breach of a ministerial duty in violation of Georgia law. Accordingly, Plaintiff contends herein that the Mountain Judicial Circuit NCIS, Defendant Bryant, Sheriff Shirley and Defendant Harrison acted outside the bounds of Georgia law on the day of the subject incident and negligently did, through their acts and omissions, combine and concur with one another in committing acts which violated Georgia law, all of which substantially contributed to the wrongful death of Plaintiff's deceased husband. All Defendants named herein are covered under policies of insurance for the negligent acts complained of herein.

COUNT NINE
NEGLIGENCE CLAIMS AGAINST DEFENDANTS
HARRISON AND SHIRLEY IN THEIR INDIVIDUAL
AND OFFICIAL CAPACITIES

115.

The Plaintiff reiterates paragraphs 1 through 65 above as though fully and completely set forth verbatim herein.

116.

Because Defendant Harrison was acting outside the scope of his authority at the time of the subject incident, he is not entitled to immunity nor is Defendant Sheriff Shirley who is vicariously responsible for his actions. On the date of the subject incident, Defendant Harrison was acting outside the scope of his authority. His authorization to act with the general duties of a law enforcement officer had been suspended effective December 31, 2008 and had not been reinstated on the date in question. Nonetheless, Defendant Harrison was performing an official function at the time of the subject incident, and because immunity has been waived through the purchase and provision for insurance coverage, both Defendants Harrison and Shirley are liable for the negligent acts alleged herein.

117.

At the time of the shooting at issue, Defendant Harrison acted negligently in

failing to fulfill his ministerial duties in seeing to it that he was in compliance with the rules and regulations of the Georgia Peace Officers' Standards and Training Council. He failed to satisfy the minimal standards set by the Georgia Peace Officers' Standards and Training Council, and in particular failed to fulfill the minimum standards required for the use of force for any law enforcement officer in Georgia.

118.

Because of his negligence in failing to keep his mandated requirements current, Defendant Harrison was not properly trained on the use of force, was not qualified on the use of the firearm, and failed to exercise ordinary care as a reasonable police officer would have exercised when faced with the same and similar circumstances.

119.

Because Sheriff Shirley is vicariously liable under Georgia law for the acts and omissions committed by deputies working under his command, both Defendant Shirley and Defendant Harrison are liable for the negligent acts described herein, which negligence substantially contributed to the wrongful death of Plaintiff's deceased husband. Additionally, due to the negligence of the Defendants as described herein, the Plaintiff is entitled to damages in her capacity as Administratrix of her deceased husband's estate.

COUNT TEN
ATTORNEY'S FEES
(AGAINST ALL DEFENDANTS)

120.

The Plaintiff reiterates paragraphs 1 through 67 above as though fully and completely set forth verbatim herein.

121.

The Defendants have acted in bad faith and have been stubbornly litigious and have caused the Plaintiff unnecessary trouble and expense. The Plaintiff seeks attorney's fees under state law as a result of such conduct and under federal law for the vindication of important civil and constitutional rights guaranteed by the Fourth Amendment of the U.S. Constitution.

WHEREFORE, the Plaintiff prays that:

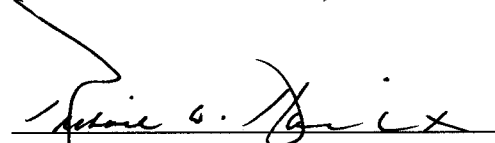
- a) That she be granted a jury trial as to all issues so triable;
- b) That she recover compensatory damages in an amount sufficient to compensate her for the full value of the life of her deceased husband;
- c) That she recover damages for the conscious pain and suffering her deceased husband experienced prior to his death as well a reimbursement for medical expenses, funeral and burial expenses

incurred as a result thereof;

- d) That she receive an award for all damages recognized by law and recoverable for the violations of her husband's rights as guaranteed by the Fourth Amendment of the U. S. Constitution;
- e) That she recover reasonable attorney's fees and costs in connection with her civil rights claims as set forth herein and/or that she recover attorney's fees and costs in connection with her state law claims; and
- f) For such other and further relief as this Court deems just and proper.

Respectfully submitted,

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CERTIFICATION OF FONT

This certifies that pursuant to LR 5.1, N.D., GA, the above and foregoing has been prepared using Times Roman New font, 14 point.

This 15th day of March, 2010.

FINCH McCRANIE, LLP

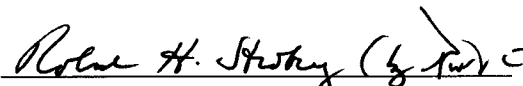

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